

**Introduced by Senator La Malfa**February 24, 2012

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An act to amend Section 512 of the Labor Code, relating to employment.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1362, as introduced, La Malfa. Meal periods.

Existing law requires an employer to provide a meal period or periods to an employee who works a specified number of hours in a shift. The meal periods may be waived by mutual consent under specified circumstances. Existing law provides exemptions from these requirements for specified occupations and employees covered by collective bargaining agreements.

This bill, in addition, would provide an exemption from the meal period requirements for commercial drivers and other persons who are employed in the transportation industry and are either (a) governed by specified federal and state regulations with regard to their hours of service, or (b) employed by a "motor carrier," as defined by federal law, if compliance would commit the employer to a particular price, route, or service. The bill would provide that these exemptions apply to wage claims that are pending as of the bill's date of enactment.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 512 of the Labor Code is amended to  
2     read:

1     512. (a) An employer ~~may~~ *shall* not employ an employee for  
2 a work period of more than five hours per day without providing  
3 the employee with a meal period of not less than 30 minutes, except  
4 that if the total work period per day of the employee is no more  
5 than six hours, the meal period may be waived by mutual consent  
6 of both the employer and employee. An employer ~~may~~ *shall* not  
7 employ an employee for a work period of more than 10 hours per  
8 day without providing the employee with a second meal period of  
9 not less than 30 minutes, except that if the total hours worked is  
10 no more than 12 hours, the second meal period may be waived by  
11 mutual consent of the employer and the employee only if the first  
12 meal period was not waived.

13     (b) Notwithstanding subdivision (a), the Industrial Welfare  
14 Commission may adopt a working condition order permitting a  
15 meal period to commence after six hours of work if the commission  
16 determines that the order is consistent with the health and welfare  
17 of the affected employees.

18     (c) Subdivision (a) does not apply to an employee in the  
19 wholesale baking industry who is subject to an Industrial Welfare  
20 Commission wage order and who is covered by a valid collective  
21 bargaining agreement that provides for a 35-hour workweek  
22 consisting of five 7-hour days, payment of one and one-half times  
23 the regular rate of pay for time worked in excess of seven hours  
24 per day, and a rest period of not less than 10 minutes every two  
25 hours.

26     (d) If an employee in the motion picture industry or the  
27 broadcasting industry, as those industries are defined in Industrial  
28 Welfare Commission Wage Order Numbers 11 and 12, is covered  
29 by a valid collective bargaining agreement that provides for meal  
30 periods and includes a monetary remedy if the employee does not  
31 receive a meal period required by the agreement, then the terms,  
32 conditions, and remedies of the agreement pertaining to meal  
33 periods apply in lieu of the applicable provisions pertaining to  
34 meal periods of subdivision (a) of this section, Section 226.7, and  
35 Industrial Welfare Commission Wage Order Numbers 11 and 12.

36     (e) Subdivisions (a) and (b) do not apply to ~~an~~ *any of the*  
37 *following*:

38     (1) ~~An employee specified in subdivision (f) if both of the~~  
39 ~~following conditions are satisfied: the employee is covered by a~~  
40 ~~valid collective bargaining agreement and that agreement expressly~~

*provides for the wages, hours of work, and working conditions of employees, and expressly provides for meal periods for those employees, final and binding arbitration of disputes concerning application of its meal period provisions, premium wage rates for all overtime hours worked, and a regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate.*

*(2) A commercial driver or other person employed in the transportation industry whose hours of service are regulated by Title 49 of the Code of Federal Regulations or Chapter 6.5 (commencing with Section 1200) of Division 2 of Title 13 of the California Code of Regulations, including any passenger in a commercial vehicle driven by a person described in this paragraph. This exemption also applies with regard to Section 11090 of Title 8 of the California Code of Regulations and any other statute or regulation that requires meal or rest periods during the working hours of a person described in this paragraph.*

*(3) A person, including a regulated or nonregulated driver, nondriver installer, lumper, and any other nondriver helper, who is employed in the transportation industry by a “motor carrier” within the meaning of the Federal Aviation Administration Authorization Act of 1994 (49 U.S.C. Sec. 13012(14)), if the employer’s compliance with subdivisions (a) and (b) would bind the employer to a particular price, route, or service.*

~~(1) The employee is covered by a valid collective bargaining agreement.~~

~~(2) The valid collective bargaining agreement expressly provides for the wages, hours of work, and working conditions of employees, and expressly provides for meal periods for those employees, final and binding arbitration of disputes concerning application of its meal period provisions, premium wage rates for all overtime hours worked, and a regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate.~~

~~(f) Subdivision Paragraph (1) of subdivision (e) applies to each of the following employees:~~

~~(1) An employee employed in a construction occupation.~~

~~(2) An employee employed as a commercial driver.~~

~~(3) An employee employed in the security services industry as a security officer who is registered pursuant to Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business~~

1 and Professions Code, and who is employed by a private patrol  
2 operator registered pursuant to that chapter.

3 (4) An employee employed by an electrical corporation, a gas  
4 corporation, or a local publicly owned electric utility.

5 (g) The following definitions apply for the purposes of this  
6 section:

7 (1) “Commercial driver” means an employee who operates a  
8 vehicle described in Section 260 or 462 of, or subdivision (b) of  
9 Section 15210 of, the Vehicle Code.

10 (2) “Construction occupation” means all job classifications  
11 associated with construction by Article 2 (commencing with  
12 Section 7025) of Chapter 9 of Division 3 of the Business and  
13 Professions Code, including work involving alteration, demolition,  
14 building, excavation, renovation, remodeling, maintenance,  
15 improvement, and repair, and any other similar or related  
16 occupation or trade.

17 (3) “Electrical corporation” has the same meaning as provided  
18 in Section 218 of the Public Utilities Code.

19 (4) “Gas corporation” has the same meaning as provided in  
20 Section 222 of the Public Utilities Code.

21 (5) “Local publicly owned electric utility” has the same meaning  
22 as provided in Section 224.3 of the Public Utilities Code.

23 (h) *The amendments to subdivisions (e) and (f) made in the*  
24 *2011–12 Regular Session of the Legislature shall apply to all wage*  
25 *claims that are pending as of the enactment date of the statute that*  
26 *made those amendments.*